

PLANNING COMMISSION MINUTES

September 21, 2010

7:00 p.m.

Present: Chairman Clark Jenkins, Vice Chairman Tom Smith, Dave Badham, Michael Allen, Barbara Holt, Von Hill, City Council Representative Beth Holbrook, City Attorney Russell Mahan, City Engineer Paul Rowland, Planning Director Aric Jensen and Recording Secretary Connie Feil.

Chairman Clark Jenkins welcomed all those present.

Dave Badham made a motion to approve the minutes for August 17, 2010 as amended. Tom Smith seconded the motion and voting passed with majority vote. Beth Holbrook, Barbara Holt and Von Hill abstained from voting.

The City Recorder Kim Coleman was present for swearing in of the newly appointed Commissioner Von Hill, and the reappointed Commissioners Clark Jenkins, Michael Allen and Dave Badham. All four members accepted the oath and were sworn in as Commissioners for the Bountiful City Planning Commission.

1. Consider preliminary and final commercial site plan approval for Kentson Car Company located at 2476 S. 500 W., Kent Sulser, applicant.

Kent Sulser, Russ Campbell, Scott Argyle, and Bronson Sulser, all associated with the project, were present. Aric Jensen explained that Kent Sulser, principal with Kentson Auto, is requesting preliminary and final site plan approval for a 3,000 sq ft office/sales building and parking lot located at 470 N. 500 West.

Mr. Jensen continued to explain that this property was previously a single family residence originally belonging to Slim Olsen, but zoned Heavy Commercial. The property was developed in the Unincorporated Davis County and was annexed into Bountiful more than 20 years ago, which is most likely when it was rezoned commercial. Because the property and all of the surrounding developments were constructed in the County, they lack storm drains and other improvements that the City requires.

The property slopes from east to west and so the applicants are proposing a single story building with a drive out basement for removing the vehicles. This is an internet based car dealership with minimal cars on display. The main floor will primarily be the sales offices, and the basement will be a drive-in photo studio.

There are no storm drain facilities in this area so the applicant will need to construct a fairly large detention basin with a surface draining outflow. There is no storm drain to connect to on this property so the applicant has arranged for the storm water to flow into the existing curb and

gutter located in the driveway of the adjacent apartment complex. The applicant will need to provide written permission from the adjacent property owner and record an easement prior to the issuance of a building permit and occupancy permit approval.

The site plan redlines include is a dumpster enclosure, fencing details and other items that need correcting.

Staff recommends preliminary and final commercial site plan approval for the Kentson Auto property subject to the following conditions:

1. The applicant provides written permission from the adjacent property owner and record a drainage easement prior to the issuance of an occupancy permit/final building permit.
2. All additional redline corrections be made prior to building permit approval.

Kent Sulser presented some colored elevations which the architect had prepared showing the design of the building, location of the dumpster, fencing and landscaping. Mr. Sulser explained that an internet based car dealership is not a new concept and that he has been doing this type of business now for about 10 years and it is very successful.

There was a discussion with concerns regarding the storm drain easement.

Michael Allen made a motion to recommend to the City Council preliminary and final commercial site plan approval for Kentson Auto subject to the conditions outlined by staff with the stipulation that the drainage easement be recorded before issuance of a building permit. Barbara Holt seconded the motion and voting past by majority vote. Von Hill abstained from voting.

2. PUBLIC HEARING – Consider approving or disapproving a variance to allow a front yard setback of 16 ft for an addition to the front of an existing home located at 177 Oakridge Dr., Steven Nielsen, applicant.

Chairman Jenkins explained the process for conducting a public hearing to those present.

Steven and Debra Nielsen, applicants, were present. Michael Nielsen, representing attorney, was also present. Aric Jensen explained that the Niensens are requesting a variance to construct an addition to their existing residential dwelling within a required front yard setback. The Niensens home was originally constructed in the unincorporated area of Davis County in the early 1970's with an attached two car garage. At the time of construction the home met all of the required setbacks. At some point between the time the home was constructed and prior to 1990, the home was annexed into Bountiful City.

On August 24, 1990, Mr. Nielsen applied for a building permit to convert his existing garage to living space and to construct a new attached two car garage with storage rooms. This addition protruded 28.5' from the front of the home toward the street (Oakridge Drive). At the time Mr. Nielsen applied for the addition, the required building setback was 30', but could be reduced to

not less than 20' under certain circumstances. According to the City Planner at the time, (John Reed Boothe), Mr. Nielsen's property qualified for the 20' setback. Due to the fact that the home is not exactly parallel to the street, a corner of the proposed garage protruded into the required front setback 1', for a linear distance of about 5 feet, while the balance of the structure was located further than 20' from the front property line. In other words, at the closest point the front of the proposed garage was 19' from the front property line, at the furthest point the front was 24' from the property line. This resulted in approximately three square feet of garage being located within the required front yard setback. There is no record that Mr. Nielsen ever applied for or was granted a variance for the three square feet of encroachment; however, Mr. Boothe issued the permit.

Earlier this year Mr. Nielsen applied for and received a building permit to construct a second addition to his home – this time to the rear of the structure. After receiving permission for the second addition, Mr. Nielsen approached the City about constructing a third addition. This addition would be to the front of the dwelling and would encroach substantially into the current front setback of 25', and at its closest point is only 16' from the front property line.

Mr. Jensen explained the process required by State Law regarding variances found in the Utah Code 10-9a-702. The code states that any approving body cannot grant a variance unless all the criteria have been met. Even if only one item has not been met, the variance cannot be granted.

The following is a conforming copy of Utah Code 10-9a-702, which outlines the duties of the appeal authority in relation to variances:

10-9a-702. Variances.(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.(2) (a) The appeal authority may grant a variance only if:(i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and(v) the spirit of the land use ordinance is observed and substantial justice done.(b) (i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:(A) is located on or associated with the property for which the variance is sought; and(B) comes from circumstances peculiar to the

property, not from conditions that are general to the neighborhood.(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:(i) relate to the hardship complained of; and(ii) deprive the property of privileges granted to other properties in the same zone.(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.(4) Variances run with the land.(5) The appeal authority may not grant a use variance.(6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:(a) mitigate any harmful affects of the variance; or(b) serve the purpose of the standard or requirement that is waived or modified.

In regards to Section 10-9a-707 (2)(a)(i - v), Staff's opinion is that the petitioners have not provided any evidence such that the Commission may grant a variance. First, literal enforcement of the ordinance would not create an unnecessary hardship because the Nielsens already have a home that they have lived in for 37 years, to which they have already made one addition, and to which they have been granted permission for a second addition.

Second, there are no special circumstances which apply to this property that do not apply to all other properties in this part of the City. First, the subject property has a generous building area that is relatively flat. Second, many lots in this part of the City have steep slopes, and so the fact that a portion of the yard has a steep slope is irrelevant.

Third, granting this variance would give the applicants rights and privileges above and beyond those belonging to adjoining property owners. No other dwelling in this area is built as close to the front property line as the Nielsen's existing dwelling and approving the requested variance to build within 16' of the property line would only further exacerbate the situation.

Fourth, in regards to Section 10-9a-707 (2)(b - c), the applicants have identified no hardship of the land, and therefore on that basis alone the Planning Commission cannot grant a variance.

Staff recommends denying the variance for the four reasons listed in the Staff Report.

The public hearing was opened for all those present with comments or concerns.

Michael Nielsen, attorney, explained that there is ample grounds for granting a variance for this property because of the way the road was put in. The road was put in after the home was built and was placed too far into the property. This is the reason for a shorter front yard setback and that gives the Commission authority to grant a variance because of the unique circumstances this has created. Mr. Nielsen feels that this is not self created, but caused by the placement of the road.

The public hearing was closed without further comments.

There was a lengthy discussion regarding the placement of the road and when it was put in. Mr. Jenkins noted that there have been roads built or adjusted differently than what was planned. Mr. Jensen agreed that this road was put in after the home was built, but the home and the road were built as platted. Currently the home is conforming and meets the current setbacks, other than the corner of the garage. Constructing an addition on the front of the home will make the home non-conforming and is a self created hardship. The home is recorded in a legal subdivision and meets the current requirements.

Dave Badham has looked at the property and feels that granting the variance for this addition will even out the property with the existing garage and that it is not a big deal and will not cause harm to anyone. Mr. Badham feels that there is a hardship with this property and a variance should be granted.

Mr. Mahan reminded the Commission that the variance requirements are mandated by State Law. Mr. Mahan reviewed the Utah Code 10-9a-702 which outlines the requirements mandated by State Law. Mr. Mahan counseled the Commission that, in his opinion, this variance request does not meet the requirements.

Barbara Holt stated that the Planning Commission has no latitude to operate outside of the law, and this body is bound by that law.

Dave Badham made a motion to approve the variance to allow a front yard setback of 16 ft. located at 177 Oakridge Dr. based on the findings that that it meets the requirements for a variance because it does create a hardship for the applicant. Clark Jenkins seconded the motion and voting was denied. Dave Badham and Clark Jenkins voting aye. Tom Smith, Michael Allen, Barbara Holt, Von Hill and Beth Holbrook voting nay.

Beth Holbrook made a motion to deny the variance located at 177 Oakridge Dr. based on the findings in the staff report that it does not meet the criteria established by State Law. Michael Allen seconded the motion and voting passed by majority vote. Beth Holbrook, Michael Allen, Barbara Holt, Von Hill and Tom Smith voting aye. Clark Jenkins and Dave Badham voting nay.

Chairman Clark Jenkins stated that the applicants had the right to appeal, and directed them to the City Attorney for more information.

3. PUBLIC HEARING – Consider revisions to Title 14 of the Bountiful City Land Use Ordinance.

Aric Jensen explained that the City Council and Planning Commission have requested to make amendments to the Land Use Ordinance in regards to the appeal process. Mr. Jensen has been working with Mr. Mahan to change the Administrative appeal process to go before an Administrative Law Judge. The Administrative Law Judge would be someone who is familiar with the law and city ordinances.

Mr. Jensen and Mr. Mahan reviewed the amendments with the Commission which lead to a discussion on the duties of each body (City Council, Planning Commission, and Administrative Committee).

The public hearing was opened and closed without any comments.

Dave Badham made a motion to send a recommendation to the City Council for approval of the amendments to Title 14 of the Bountiful City Land Use Ordinance subject to the redlines and changes discussed. Tom Smith seconded the motion and voting was unanimous in favor.

4. Planning Director's report and miscellaneous business.

Aric Jensen explained that Mr. Van de Merwe, owner of a 3 acre lot, would like to present a proposal for his property before making any plans for development.

Nate Pugslee, Jim Boyden, developers, and Mr. Van de Merwe, property owner, were present. Mr. Van de Merwe has been working with Mr. Pugslee and Mr. Boyden on the possibility of developing the property located at 1995 & 2005 S. Main, which is zoned RM-19. They have prepared a 56 unit (19 units /acre) version and an 88 unit (30 units/acre) version. The higher density is based on a conversation with Mr. Jensen that there could be a possibility for higher density in this area because it is adjacent to the proposed streetcar route.

Mr. Jensen explained that this property is adjacent to a current bus line and is already a high density area. He explained the concept of underutilized capacity as an example. He said that Main Street has to be maintained whether there are 5 units or 50 units. Mr. Jensen feels that the higher density will not impact traffic, but it will provide more revenue for the City.

There was a discussion regarding the possibility of having the structures 3 to 4 stories tall. The Commission recommended having no structures taller than 3 stories. A 4 story structure is too large and will not fit with the neighborhood.

Paul Rowland explained that the zoning ordinance requires that any project which has more than 20 units have 2 driveways and 2 accesses. The proposal is for a 12 ft wide hard surface with

landscaping as a fire lane, which is unacceptable. If this project is approved it will need 2 driveways and 2 accesses.

The Planning Commission suggested that the applicants work with Staff to then revise their plans. They felt that this project could be an asset to the City.

Meeting adjourned at 8:50 p.m.

